

OGC Has Reviewed

CERTIFICATES

INSTRUCTIONS.

26 September 1945

MEMORANDUM

25X1A

TO: [REDACTED]

25X1A

FROM: [REDACTED]

SUBJECT: R.S. 291, 31 U.S.C.A. 107

1. (a) The subject act was first passed on the 9th of February 1793 (1 Stat. L. 300) at which time it provided:

"That in all cases, where any sum or sums of money, have been issued, or shall hereafter issue, from the Treasury for the purpose of intercourse, or Treaty, with foreign nations, in pursuance of any law, the President shall be, and he is hereby authorized to cause the same settled with the accounting officers of the Treasury, in manner following, that is to say, by causing the same to be duly accounted for, specifically in all instances wherein the expenditure thereof may in his judgment be made public, or by making a Certificate or Certificates, or causing the Secretary of State to make a Certificate, or Certificates of the amount of such expenditures as he may think it advisable not to specify and every such Certificate shall be deemed a sufficient voucher for the sum or sums therein expressed to have been expended."

This section in substantially the same form, was incorporated as Section 291 of the Revised Statutes, and is to be found today in 31 U.S.C.A. Section 107 as follows:

"Settlement of expenses of intercourse with foreign nations. Whenever any sum of money has been or shall be issued, from the Treasury, for the purposes of intercourse or treaty with foreign nations, in pursuance of any law, the President is authorized to cause the same to be duly settled annually with the General Accounting Office, by causing the same to be accounted for,

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specifically, if the expenditure may, in his judgment, be made public; and by making or causing the Secretary of State to make a certificate of the amount of such expenditures as he may think it advisable not to specify; and every such certificate shall be deemed a sufficient voucher for the sum therein expressed to have been expended. (Underlining Supplied)

(b) Compare our own appropriation language with respect to confidential expenditures, as follows:

P. L. 372 - 78th Congress:

"35,000,000 of such 37,000,000 may be expended for objects of a confidential nature, such expenditure to be accounted for solely on the certificate of the Director of the Office of Strategic Services and every such certificate shall be deemed a sufficient voucher for the amount therein certified."

2. (a) This statute has not been subject to court construction, and the only opinion of the Attorney General which might refer to it is in 1 Op. Atty. Gen. 545 where the President is advised that he may freely use funds appropriated, to the extent of one year's salary, for the purchase of an outfit for his foreign minister, John Adams. The opinion does not refer to any specific law or any specific appropriation; but is indexed in the Justice Department's card index as referring to R.S. 291.

(b) In 1802 a committee was appointed in the House of Representatives "to inquire and report whether moneys drawn from the Treasury have been faithfully applied for the objects for which they were appropriated, and whether the same have been regularly accounted for; and to report, likewise, whether any further arrangements are necessary to promote economy, enforce adherence to legislative restrictions, and secure the accountability of persons entrusted with public money." A report written by Mr. Joseph H. Nicholson of Maryland was submitted on April 29th, 1802. This report is contained in American State Papers, Finance, Vol. 1, pp. 752-57, 764, 816, 17; and Annals of Congress Vol. 12, 1259-75. The report is reproduced in Control of Federal Expenditures, a book published by the Brookings Institution and compiled by Fred W. Powell. We have a copy of this book in our office. In this report (P. 205-6, Control, supra) certain expenditures were made under the above act for secret service activities of

afforded by a long time

the War, Navy and State Departments, which were certified by vouchers signed by the President. The committee held this an illegal exercise of the said act as the expenditures were not shown to be for "contingent expenses only of foreign intercourse." Oliver Wolcott in an Address to the People of the United States in reply to the Nicholson Report (P. 271, et seq "Control of Federal Expenditures", supra.) justified his action in general, and specifically, in his 9th point, (Control, P. 325 et seq.), with regard to "the application of money for purposes of a confidential nature." His full reply in this respect, which quotes the applicable portion of the Nicholson report, is attached hereto as Attachment A. In this reply he states:

"If one of our Naval Commanders, now in the Mediterranean, should expend a few hundred dollars for intelligence, respecting the force of his enemy, or the measures meditated by him, ought the present administration to disallow the charge, or publish the source from which the intelligence was derived?"

(c) The Comptroller General has construed the subject act in two published decisions, and in a few unpublished letters.

(1) The first published Comptroller decision construing the subject act is to be found in 2 C.G. 121. Here there was a voucher for \$596.40 which was submitted by the Secretary of State to be paid out of funds appropriated for "emergencies arising in the diplomatic and consular service 1921" and which showed that the money was to be paid because of a deficiency in another appropriation, viz: Act of June 4, 1920, 41 Stat. 741 making an appropriation "For rent of quarters for student interpreters attached to the Embassy to Japan." The Secretary of State, by direction of the President, certified the voucher under the provisions of the subject act, stating that it was an expenditure "the nature and object of which * * * it is deemed inexpedient to make known."

The voucher was disallowed by the Comptroller General on the ground that:

"The character of the expense having been fully disclosed by the vouchers * * * neither the letter nor the purpose of the statute and appropriation extends them to after allowance of payments in excess of regularly made specific

appropriations which have been regularly accounted for on vouchers specifying the exact nature and amount of the expense. * * * * The letter of the law is to the effect that the Secretary may make 'a certificate of the amount of such expenditure as he may think it advisable not to specify.' The certificate in question specifies with particularity the exact expenditures which the certificate is designed to cover, thus conclusively negating any assumption that the expenses were of the confidential character contemplated by the intent and purpose of the law, which is to protect expenditures which the policy of the State Department requires shall not be made public."

In another part of the opinion (P. 123) the Comptroller General makes the statement:

"Speaking generally and without reference to the facts and certification in the instant case, I may say that this office recognizes to its full extent the discretionary power conferred upon the Secretary of State by Section 292, Revised Statutes, and in no case will a certificate made by the Secretary in conformity with the provisions of that Section and in support of a payment from the supporting appropriation be questioned by this office."
(Underlining supplied.)

(11) A more narrow construction of the subject act was made by Comptroller General, J. R. McCarl, in an unpublished letter to the Secretary of State, dated September 15, 1932, and filed with the General Accounting Office in M.S. Vol. 133, page 1068. The Secretary of State certified three vouchers under the provisions of the subject act which showed on their face that they were in payment of passage on a foreign vessel for the Secretary of State and three other individuals in his department. The Comptroller refused to allow the vouchers on the ground that travel on a foreign vessel while on official Government business was in violation of section 601 of the Merchant Marine Act of May 22, 1928, 45 Stat. 697.

The Secretary of State resubmitted the vouchers with a letter stating:

"You are advised that in view of the special circumstances in connection with the trip the account was paid from the appropriation 'emergencies arising in the Diplomatic and Consular Services, 1932,' and that because of such circumstances connected therewith was accounted for by certificate of the Secretary of State under Section 291 of the Revised Statutes * * *"

To this the Comptroller General replied:

"In view of the fact that the voucher submitted for pre-audit discloses that the return passage of George A. Morlock, Captain Eugene A. Regnier, Allen T. Kotz and yourself, were, upon the SS VULCANIA, a vessel of foreign registry, the certificate as under Section 291, Revised Statutes, that 'the nature and object of which expenditure it is deemed advisable not to specify', is not understood. Certainly the Congress had no intention that Section 291, Revised Statutes, and the appropriation for emergencies arising in the diplomatic and consular service, * * * should be used to avoid or circumvent a statutory prohibition as in Section 601 of the Merchant Marine Act or to avoid the use of a specific appropriation for expenses if properly chargeable thereto."

"While Section 313 of the Budget and Accounting Act of June 10, 1921, 42 Stat. 26, exempts expenditures made under the provisions of Section 291 of the Revised Statutes from the requirements of said Section 313 relative to furnishing information to the Comptroller General, it does not exempt such expenditures from the direction in Section 312(c) of said Act that:

"The Comptroller General shall specially report to Congress every expenditure or contract made by any department or establishment in any year in violation of law."

"Accordingly, you are requested to inform this office of any reason you may wish to submit why the expenditures for transportation and expenses upon the foreign vessel should not be reported to the Congress under Section 312(c) of the Budget and Accounting Act as an expenditure in violation of law."

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(iii) In answer to a request from the Secretary of State as to whether, by virtue of R. S 291, an appropriation for "Emergencies arising in the Diplomatic and Consular Service, 1922," could be used to pay the deficiency in another appropriation entitled "Transportation of Diplomatic and Consular Officers, 1921", the Secretary of State was advised by letter from the Comptroller General, dated September 14, 1921 that the requisition would be approved in "this instance" but that "This action is not to be taken as sanctioning a practice of using the emergency appropriation in this way to meet deficiencies in other appropriations."

(iv) In answer to a letter from the Secretary of the Navy as to whether certain naval officers had to render specific accounts in certain instances the Comptroller General stated (U.S. Vol. 74, page 68):

"There are at present two classes of expenditures not required to be supported by details, receipts, etc., and in both classes the omission of such details, receipts, etc. is specifically provided for by Statute. The first class covers expenditures by the Department of State which under the provisions of Section 291, Revised Statutes, are settled by this office upon the certificate of the Secretary of State. The other class covers expenditures from contingencies, Military Intelligence Service, in which the act making the appropriation specifically provides for certain payments to be made upon certification of the Secretary of War. See 44, Stat. 1107."

(v) In a letter to the Secretary of State, dated Jan. 3, 1930, the Comptroller General specified the form of voucher to be used under R.S. 291. After stating certain requirements as to numbering, stating the name of disbursing officer, etc. he said that it would then be in proper form to complete the accounting records in connection with this form of expenditure "and at the same time would not disclose the nature and object thereof." (Underscoring supplied) U. S. Vol. 101, page 74.

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(vi) Attention is directed to the decision of the Comptroller General dated January 20, 1945 (B-46566) Published in 24 C.G. 544 which also construes the subject act. In that case it holds that the disbursing officer may make payment of vouchers under the subject act without such payment having been certified in accordance with the provisions of 31 U.S.C. Supp III, 82b and c. The decision is based on the fact that the subject act was enacted prior to 31 U.S.C. Supp III, 82b and c, and that the general provision of the latter should not be construed as affecting the special provisions of R.S. 291 which requires that "every such certificate shall be deemed a sufficient voucher for the sum therein expressed to have been expended." The Comptroller General states:

"The later act of December 29, 1941, contains no specific provision repealing prior special statutes and its provisions are not so inconsistent with the provisions of section 291, Revised Statutes, as to cause its repeal by implication. On the contrary, it well may be assumed that some expenditures may be authorized by the Secretary of State under conditions so confidential that even the certifying officer may not be informed thereof and, of course, that officer could not be required to accept final responsibility by certifying a voucher as representing a lawful payment when he is not informed of the object or purpose of the expenditure. Accordingly, I have to advise that the special statute as restated in 31 U.S.C. 107 is not affected by the subsequent general statute of December 29, 1941."

Thus, there is a question as to whether disbursements of .003 funds are subject to the provisions of either 31 U.S.C. Supplement III, 82b or 82c. (Sections 1 and 2 of the Act of Dec. 29, 1941, 55 Stat. 875) since the latter act was in force prior to the OSS appropriation.

31 U.S.C. Supplement III 82b provides:

Disbursing officers shall:

a. disburse money in accordance with vouchers certified by heads of departments

or their delegates.

b. determine that vouchers are correct and certified as above recorded.

c. be held accountable accordingly.

31 U.S.C. Supplement III 82c provides:

Officer certifying voucher shall:

a. be held responsible for existence and correctness of facts recited in the certificate or on the voucher,

(with regard to OSB funds - might be held for existence of true confidential purpose).

b. must give bond.

c. be held accountable for illegal, improper or incorrect payments resulting from misleading certificate made by him, as well as for a payment not a legal obligation under the appropriation involved.